



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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MEMORANDUM FOR DOUG E. PETERSON
PROGRAM ANALYST
W:E:DEF C4-181

FROM: Pamela W. Fuller *PWF*
Senior Technician Reviewer
CC:PA:APJP:1

SUBJECT: Request for Electronic Signature and Authentication Methods for
Transcript Delivery System and Disclosure Authorization

This memorandum responds to your email dated May 7, 2001 requesting our review of proposed methods of electronic signature for the Transcript Delivery System (TDS) and the Disclosure Authorization.

Request for Electronic Signature and Authentication Methods for Transcript Delivery System (TDS)

The Internal Revenue Service ("Service") proposes to provide a system for authorized users to request and receive returns and return information electronically. Specifically, the Service proposes electronic signature and authentication methods for IRC § 6103(c) consents from the Department of Education and its designated contractors.

According to your request, "the consent form is being developed by [Department of Education (ED)], with IRS final review and approval." In the absence of viewing the consent form, we are unable to determine whether the signature method set forth in the request will result in a valid consent under the regulations governing consents to the disclosure of returns and return information. Treas. Reg. § 301.6103(c)-1T.

As for the validity of the taxpayer's signature on the consent form, Treas. Reg. § 301.6103(c)-1T(e)(2) states that a request for or consent to disclose may be signed by any method of signing the Secretary of the Treasury has prescribed pursuant to § 301.6061-1(b) of the regulations in forms, instructions, or other appropriate guidance.

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Section 6061(a) of the Code requires, as a general rule, that any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary. Section 6061(b) of the Code provides that the Secretary shall develop procedures for the acceptance of signatures in digital or other electronic form. Section 6065 provides that except as otherwise provided by the Secretary, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under penalties of perjury. Section 301.6061-1(b) states that the Secretary may prescribe in forms, instructions, or other appropriate guidance the method of signing any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations.

Sections 6061 and 6065 of the Code give the Secretary broad discretion to prescribe the method of signing any return, statement, or other document. In addition, the Secretary may prescribe rules that would permit the Service to develop procedures for accepting electronic signatures. We do not see any legal impediments to the proposed electronic signature method. However, the decision on which procedures to use for accepting electronic signatures on returns or other documents is a business decision. As such, the ultimate determination rests with the Commissioner and the Director of Electronic Tax Administration.

e-services Disclosure Authorization Electronic Signature

The Service also proposes an electronic signature and authentication method for accepting Power of Attorneys and Tax Information Authorizations. Taxpayer representatives will use their username, password and PIN as a signature on the power of attorney. The taxpayer will use a self selected PIN to complete particular fields established by the Service.

Section 601.503(e) of the procedural rules authorizes the Service to substitute other requirements for power of attorney as evidence of the authority of the representative. The proposed procedure appears to be intended to provide such a substitute.

As for the proposed electronic signature method, the Service has broad discretion to develop procedures for accepting electronic signatures on returns or other documents. We do not see any legal impediments to implementing the above electronic signature method. However, the decision to accept electronic signatures is a business decision. As stated above, determining what procedures to use for accepting electronic signatures rests with the Commissioner and the Director of Electronic Tax Administration.